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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,057	03/31/2004	Wanzhu Hou	26293-168739	5257

38598 7590 03/09/2007

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EXAMINER	
DAWSON, GLENN K	
ART UNIT	**PAPER NUMBER**
3731	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/813,057	HOU ET AL.	
	Examiner	Art Unit	
	Glenn K. Dawson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cap with the strip as claimed in claims 7 and 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: the specification doe snot provide antecedent basis for the cap having a strip with the metal members on it.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoo-6711750.

Yoo discloses a strap of material having metallic projections 32 thereon and Velcro adjusting means which would allow the device to be wrapped around a user's head and tightened thereon with at least one of the metal projections located on the Baihui accupoint.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3,5,13,14,16,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoo-'750 in view of Kramer-2003/0074020.

Yoo discloses the invention as claimed with the exception of the specific type of metal and the projections being placed on both the Baihui point and another acupressure point. Kramer discloses the type of metal on acupressure projections and also discloses that it was known to attach multiple acupressure projections on a single backing substrate in order to press against multiple acupressure points in the same basic location. It would have been obvious to have used iron as the metal, as simply an

obvious design choice. It also would have been obvious to have placed multiple projections on the strap in locations to press against multiple acupressure points, in order to properly treat different maladies. The examiner also contends that the spacing between the projections of Yoo would inherently allow one point to be placed on the Baihui point and one of the other projections on one of the other claimed acupressure points, based on their relative locations on the human body.

Claims 1,3-6,13,14,16,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer-2003/0074020 in view of Yoo-'750.

Kramer discloses an elastic backing and metallic nubbins for placing on acupressure points on different locations of the body, including the scalp. The backing is formed into the appropriate shape depending on the location of the body it is to be placed. See paragraph 10. Also disclosed is the use of such a device to treat insomnia. However, it is not clearly hat the device includes some manner to adjust the tightness of the device.

Yoo discloses a strap with metal nubs thereon to perform acupressure on points closely located together. It would have been obvious to have used a strap with the metal nubs thereon to perform acupressure. As this has a means to adjust the tension applied by the device to the particular area of the body it is to be applied to.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer-2003/0074020 in view of Yoo-'750 as applied to claim 5 above, and further in view of Ioan-5792174.

Kramer as modified by Yoo make obvious the invention as claimed with the exception of the strap being on a cap. Ioan discloses that it was known to incorporate acupressure nubs on a cap in order to press against pressure points on the scalp. It would have been obvious to have attached the strap of Kramer and Yoo into the cap of Ioan, in order to provide a means by which the proper acupressure points can be pressured on the scalp to perform the desired treatment.

Claims 1,3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ioan-'174 in view of Kramer-'020.

Ioan discloses a cap with hard nubs for applying pressure to points on the scalp. However, the nubs are not metallic. Kramer discloses metallic acupressure applying nubs. It would have been obvious to have used metal for the nubs of Ioan, as the only requirement for the nubs is that it be a hard material. Ioan also discloses that the nubs are located to apply pressure to multiple acupressure points on the scalp.

The applicant has detailed that the Baihui point is well known and as a pressure point on the scalp, it would have been obvious to apply pressure thereto for treating different maladies. The application of pressure on this point will inherently treat insomnia.

Response to Arguments

Applicant's arguments filed 11-20-2006 have been fully considered but they are not persuasive.

The device of Yoo reads on the claims because it is without dispute that one could take the strap of Yoo and place one of the metal nubs onto the Baihui point. After

completed, the rest of the strap could then be placed around the head and tightened. This is all that is necessary to read on the claims. The fact that Yoo does not state that it is for use on the head or scalp is irrelevant to the issue. If the prior art structure is capable of performing the claimed functions, then it reads on the claims. Applicant's device could be put on the wrist such that the nubs press against a different acupressure point. The fact that this can be done in no way changes the structure of the device. Finding a different use for a known device is not patentable unless it is claimed in a process or method.

The examiner has modified the base reference of Ioan with a different teaching reference, as applicant's arguments with respect to Wexler are persuasive. However, Kramer also discloses that metallic acupressure nubs were well known at the time of the invention and would have been obvious substitutions. The only arguments presented against the 103 of Ioan in view of Wexler was that Ioan failed to disclose metallic nubs, and that Wexler taught away from placing metallic nubs in contact with the skin, which would clearly defeat a main tenant of the manner of use of the Ioan device. As the examiner has identified a different teaching reference for the metallic nubs, where the nubs are actually for placement against the skin during use, the examiner contends that all of the claimed limitations are now obvious.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Glenn K Dawson
Primary Examiner
Art Unit 3731

Gkd
03 March 2007